

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

RICHARD AUSTIN, an individual, on behalf of himself, the general public, and all others similarly situated,

Plaintiff,

VS.

AMAZON.COM, INC., a Delaware Corporation authorized to do business in the State of Washington,

Defendant.

Case No. C-09-1679 JLR

JOINT STATUS REPORT AND RULE 26(f) DISCOVERY PLAN

Plaintiff Richard Austin (“Plaintiff”) and Defendant Amazon.com, Inc. (“Defendant”) submit the following Joint Status Report pursuant to the Court’s *Scheduling Order*.

1 **I. NATURE OF THE CASE**

2 **A. Plaintiff's Claims**

3 Plaintiff claims that Defendant's policy of rounding off time to the nearest seven and one
 4 half minutes combined with its other policies and procedures violates the overtime provisions of
 5 the Fair Labor Standards Act, 29 U.S.C. Section 207, and those applicable state laws that mirror
 6 or adopt by reference the federal overtime law.

7 **B. Defendant's Defenses**

8 Defendant denies any liability for Plaintiff's claims, and is moving this Court to dismiss
 9 Plaintiff's First Amended Complaint with prejudice for failure to state a claim, on the grounds
 10 that the conduct at issue – maintaining both a rounding policy and an attendance policy – is not
 11 unlawful and Plaintiff has failed to provide any factual support showing that he was actually
 12 harmed by these policies. The Motion to Dismiss is noted for March 26, 2010.

13 **II. STATEMENT OF ADR METHOD**

14 Should the case remain pending, the parties propose engaging in private mediation within
 15 eight (8) months from the filing of this Report. This will allow time for the adjudication of
 16 Defendant's Motion to Dismiss and for discovery sufficient to facilitate a meaningful mediation.

17 **III. JOINDER OF ADDITIONAL PARTIES**

18 The parties are not aware of any additional parties to be joined at this time.

19 **IV. DISCOVERY**

20 **A. FRCP 26(f) Conference and FRCP 26(a) Initial Disclosures**

21 The parties participated in a conference pursuant to Fed. R. Civ. P. 26(f) on February 25,
 22 2010. Given that the pending Motion to Dismiss, if granted in whole or in part, would dispose of
 23 one or all of Plaintiff's claims, the Parties propose delaying the exchange of initial disclosures
 24 until after the Court has ruled on the Motion to Dismiss and the pleadings are settled.

25 **B. Subject of Discovery**

26 Plaintiff anticipates seeking discovery on Defendant's payroll and timekeeping policies
 27 and electronic records. Defendant asserts that Plaintiff's Amended Complaint should be
 28 dismissed, with prejudice, and no discovery would therefore be needed. Should the Court deny

1 Defendant's Motion to Dismiss in whole or in part, the parties will embark on discovery and will
 2 update the Court accordingly.

3 **C. Changes to Discovery Limitations**

4 The parties do not, at this time, propose any additional changes to the limitations on
 5 discovery imposed under the Federal Rules of Civil Procedure.

6 **D. Expense Management**

7 Should the Court deny Defendant's Motion to Dismiss in whole or in part, the parties
 8 propose exchanging some documents pertaining to Plaintiff informally. Defendant also proposes
 9 focusing discovery on the viability of Plaintiff's individual claims and issues relevant to
 10 collective certification prior to the adjudication of any collective notice motion.

11 **E. Orders**

12 The parties do not propose that the Court enter any other orders under Fed. R. Civ. P 26(c)
 13 or under Local Rule CR 16(b) and (c).

14 **V. CUT-OFF DATES AND SCHEDULING**

15 The parties agree that setting deadlines for discovery cut-off before the Court has ruled on
 16 Defendant's Motion to Dismiss is premature. The parties propose submitting an additional Joint
 17 Status Report with deadlines after the Court has ruled on the Motion to Dismiss and the pleadings
 18 are settled, at which time the parties will be better able to assess the nature and extent of
 19 discovery needed to prepare for summary judgment, collective certification and trial.

20 **VI. REFERRAL TO MAGISTRATE JUDGE**

21 The parties do not consent to the assignment of this case to a full-time Magistrate Judge.

22 **VII. BIFURCATION**

23 Defendant asserts that, should the Court deny Defendant's Motion to Dismiss in whole or
 24 in part, discovery should be bifurcated. Specifically, prior to certification, discovery should be
 25 focused on the merits of Plaintiff's individual claim and on issues relevant to collective
 26 certification.

27 **VIII. PRE-TRIAL STATEMENTS**

28 The parties assert that determining the necessity of pretrial statements and pretrial orders

1 is premature at this time. Should the Court deny Defendant's Motion to Dismiss in whole or in
 2 part, the parties will be better able to assess this issue after conducting discovery and engaging in
 3 private mediation.

4 **IX. SUGGESTIONS FOR SHORTENING/SIMPLIFYING CASE**

5 In addition to the suggestions described above, Defendant submits that issues in this case
 6 may be narrowed by a dispositive motion for summary judgment.

7 **A. Estimate of Trial Date**

8 The parties cannot anticipate at this early stage when this case will be ready for trial.

9 **B. Demand for Jury Trial**

10 Plaintiff seeks a non-jury trial.

11 **C. Estimate of Trial Time**

12 The parties cannot anticipate at this early stage the number of trial days needed to
 13 adjudicate the issues in this case.

14 **X. NAMES, ADDRESSES AND TELEPHONE NUMBERS OF TRIAL COUNSEL**

15 A complete list of counsel representing the parties are provided below.

16 **XI. SERVICE OF PARTIES**

17 All defendants have been served.

18 **XII. SCHEDULING CONFERENCE**

19 The parties do not request a scheduling conference prior to a scheduling order being
 20 entered in this case.

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1 Dated: February 26, 2010

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21 Dated: February 26, 2010

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served true and correct copies of the foregoing document(s) on parties and their counsel of record, in the manner indicated:

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Dated this 26th day of February 2010

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